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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ZHONG ZHANG, individually,)	Case No.: 07-02754 JF
JIE MA, individually,)	
Plaintiffs,)	[PROPOSED] ORDER GRANTING
v.)	PLAINTIFF'S MOTION FOR
)	SUMMARY JUDGMENT
EMILIO T. GONZALEZ, Director of the U.S.)	
Citizenship and Immigration Services,)	
ALBERTO R. GONZALES, as Attorney)	
General of the United States,)	
MICHAEL CHERTOFF, in his official)	
capacity, Secretary, United States Department)	
of Homeland Security,)	
Defendants.)	

Plaintiffs Zhong Zhang and Jie Ma are natives of the People's Republic of China who submitted I-485 applications to the United States Citizenship and Immigration Service ("USCIS") on April 12, 2005, seeking to adjust their immigration status to that of lawful

1 permanent residents. Their applications remain unadjudicated for more than two years.

2 Plaintiffs assert that they have made numerous inquiries with the USCIS and FBI regarding their
3 applications. On May 25, 2007, Plaintiffs filed a petition for writ of mandamus based on
4 Defendants' delay in adjudicating their applications for adjustment of status. On September 28,
5 2007, Plaintiffs moved for summary judgment under Federal Rules of Civil Procedure 56(c).
6 Plaintiffs argue that by failing to act on their application for Defendants have violated their non-
7 discretionary duty to adjudicate Plaintiffs' application within a reasonable timeframe.
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9 Mandamus is an extraordinary remedy and is available to compel a federal official to
10 perform a duty only if: (1) the individual's claim is clear and certain; (2) the official's duty is
11 nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt, and (3) no other
12 adequate remedy is available. Patel v. Reno, 134 F.3d 929, 931 (9th Cir. 1997); Azurin v. Von
13 Raab, 803 F.2d 993, 995 (9th Cir.1986). The Court finds that both the Immigration and
14 Nationality Act, and its implementing regulations, create a mandatory and non-discretionary duty
15 that Defendants adjudicate the pending applications for adjustment of status to that of a lawful
16 permanent resident. See 8 U.S.C. § 1255(a); 8 C.F.R. § 245(a)(5). The Court further finds that
17 the Administrative Procedures Act ("APA") requires that such applications be adjudicated within
18 a "reasonable time." 5 U.S.C. § 555(b). The Court finds that more than two and half years of
19 delay in adjudicating Plaintiff's applications is unreasonable. See e.g. Yu v. Brown, 36
20 F.Supp.2d 922, 928-32 (D.N.M.1999), (applying the APA's reasonable requirement to similar
21 regulatory provisions); Kim v. Ashcroft, 340 F. Supp 2d 384, 391-92 (S.D.N.Y.2004)(same).
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25 After considering the motion for summary judgment, the parties' responses, arguments of
26 counsel and all other matters presented to the Court, IT IS HEREBY ORDERED THAT
27 Plaintiffs' motion for summary judgment be and hereby is GRANTED. The Court orders that
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1 both of Plaintiff's applications for adjustment of status be adjudicated within thirty (30) days of
2 this order. If Defendants deny one of the applications they must adjudicate the remaining
3 application within thirty (30) days of such denial.

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JEREMY FOGEL
United States District Judge
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